



Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Robert L. Ehrlich, Jr., Governor – Michael S. Steele, Lt. Governor – Nelson J. Sabatini, Secretary

MARYLAND MEDICAL ASSISTANCE PROGRAM
Managed Care Organization Transmittal No. 47
November 26, 2003

Managed Care Organizations

FROM:

Susan J. Tucker
Susan Tucker, Executive Director
Office of Health Services

NOTE:

Please ensure that the appropriate staff members in your organization are informed of the contents of this transmittal.

Adoption of Amendments to HealthChoice Regulations

ACTION:

Adopted Regulations

EFFECTIVE DATE:

November 10, 2003
(Emergency regulations became effective on July 1, 2003)

PROGRAM CONTACT:

James Gardner, Chief
Division of HealthChoice Management and
Quality Assurance
(410) 767-1482 or call
1-877-4MD-DHMH extension 1482

The Secretary of Health and Mental Hygiene has adopted the following amendments and new HealthChoice Regulations with non-substantive changes: Regulations .02, .19, and .20, and repealed Regulation 19-1 under COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations; Regulations .01, and .12 under COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits; and Regulations .01 and .03 and new Regulation .01-1 under COMAR 10.09.73 Maryland Medicaid Managed Care Program: Sanctions.

The emergency amendments became effective on July 1, 2003. Attached is a copy of the proposed amendments originally published in the July 25, 2003 issue of the Maryland Register (Vol. 30, Issue 15) and were included with Managed Care Organization Transmittal No. 43, dated August 8, 2003. Also, a copy of the non-substantive changes as published in October 31, 2003 Maryland Register is attached to this transmittal.

Attachments



.15 Post-Eligibility Requirements.

A. — C. (text unchanged)

D. Scheduled Redetermination.

(1) (text unchanged).

(2) [For ESI, redetermination shall be scheduled concurrently with the open enrollment period established by the employer, and at least annually after that.]

(3) For default, redetermination] *Redetermination* shall be scheduled annually.

[(4)] (3) (text unchanged)

NELSON J. SABATINI

Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS**10.09.58 Family Planning Program**

Authority: Health-General Article, §§2-204(b), 15-103, and 15-105, Annotated Code of Maryland

Notice of Proposed Action

[03-201-P]

The Secretary of Health and Mental Hygiene proposes to amend Regulation .01 under COMAR 10.09.58 Family Planning Program.

Statement of Purpose

The purpose of this action is to replace the citations to the pregnant women and children's eligibility category with the current citation for the Maryland Children's Health Program and to limit eligibility for the Family Planning Program to women who continue to meet the income guidelines for pregnant women under COMAR 10.09.11.03 Eligibility, Maryland Children's Health Program, whose family income is equal to or less than 250 percent of the federal poverty level.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Regulations Coordinator, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 521, Baltimore, Maryland 21201, or fax to (410) 333-7687, or email to regs@dnhm.state.md.us, or call (410) 767-6499 or 1-877-4MD-DHMH, extension 6499. These comments must be received by August 25, 2003.

.01 Purpose and Scope.

A. (text unchanged)

B. A maximum 5-year period of eligibility may be established for women who:

(1) Have filed an application with a local department of social services[,] or at the local health department;

(2) Have been determined eligible by a local department of social services or the local health department in the [Pregnant Women and Children's (PWC)] Maryland Chil-

dren's Health Program Medicaid eligibility category[, other than for a presumptive eligibility period,] as defined in COMAR [10.09.28.02;] 10.09.11.03;

(3) Have lost Medicaid coverage in the [PWC] Maryland Children's Health Program category after their pregnancy related period of eligibility; and

(4) (text unchanged)

C. A woman eligible for Medical Assistance benefits under this chapter shall continue to be eligible for benefits for 5 years [without regard to any change in income of the family of which she is a member,] unless she [becomes]

(1) [A] *Becomes* a resident of a state other than Maryland; [or](2) [Eligible] *Is determined eligible* for another Medical Assistance program[.];(3) *Has a permanent sterilization*; or(4) *Has family income that exceeds the eligibility requirements for pregnant women under COMAR 10.09.11.*

NELSON J. SABATINI

Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS**Notice of Proposed Action**

[03-184-P]

The Secretary of Health and Mental Hygiene proposes to:

(1) Amend Regulations .02, .19, and .20 and repeal Regulation .19-1 under COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations;

(2) Amend Regulations .01 and .12 under COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits; and

(3) Amend Regulations .01 and .03 and adopt new Regulation .01-1 under COMAR 10.09.73 Maryland Medicaid Managed Care Program: Sanctions.

Statement of Purpose

The purposes of this action are to:

(1) Require MCOs to pass on to providers monies that were allocated in a rate adjustment and specified by the Department for a fee increase;

(2) Repeal Regulation .19-1 Risk Sharing — Medical Expenses of Enrollees with Hepatitis C;

(3) Allow MCOs to charge its enrollees up to a \$2 copayment for brand name drugs;

(4) Provide the Department with the flexibility to sanction MCOs without corrective action plans;

(5) Require the Department to comply with CMS notification requirements for sanction determinations at 42 CFR §438.730;

(6) Require MCOs to reserve nursing facilities beds for recipients hospitalized for an acute condition within the first 30 days of their nursing home stay, not to exceed 15 days per single acute visit;

(7) Allow the Department or Legislature to redirect the MCO incentive fund;

(8) Amend the 42 CFR reference for Advance Directive; and

(9) Amend the reference for the American with Disabilities Act of 1990.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed regulation, but the proposed regulation is not more restrictive or stringent.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Regulations Coordinator, Department of Health and Mental Hygiene, Room 521, 201 West Preston Street, Baltimore, Maryland 21201, or fax to (410) 333-7687, or email to regs@dhmh.state.md.us, or call (410) 767-6499, or 1-877-4MD-DHMH, extension 6499. These comments must be received by August 25, 2003.

10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations

Authority: Health-General Article,
Annotated Code of Maryland;
Ch. 203, Acts of 2003

| Regulations | Sections |
|--------------|--------------------------|
| .02 | \$15-102.4(a)(i) |
| .19 | \$15-103(b)(18) |
| [.19-1 | \$15-103(b)(18)] |
| .20 | \$15-103(b)(11) and (19) |

.02 Conditions for Participation.

A. — F. (text unchanged)

G. Health Care Delivery: An MCO shall:

(1) (text unchanged)

(2) Conform with and fulfill the requirements of [42 CFR §417.436(d)] 42 CFR §438.6(i), which pertains to advance directives;

(3) — (5) (text unchanged)

H. An MCO:

(1) Shall comply with the standards in [P.L. 101-330] P.L. 101-336, Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.;

(2) — (4) (text unchanged)

I. — X. (text unchanged)

.19 MCO Reimbursement.

A. — C. (text unchanged)

D. Interim Rates Adjustments.

(1) (text unchanged)

(2) The Department shall adjust the capitation taxes specified in §B(4)(a) and (b) of this regulation to reflect service cost changes that qualify under §D(3) of this regulation and result from:

(a) (text unchanged)

(b) An increase or decrease in Medicaid fee-for-service payment rates or copayments, if the MCOs are obligated to adjust their payment rates to providers as a result of those fee-for-service rate changes; or

(c) (text unchanged)

(3) — (4) (text unchanged)

.20 MCO Payment for Self-Referred [and], Emergency, and Physician Services.

A. — B. (text unchanged)

C. An MCO shall pass on to providers any MCO rate adjustment that is specified by the Department for a fee increase.

10.09.67 Maryland Medicaid Managed Care Program: Benefits

Authority: Health-General Article, §15-103(b)(2)(i),
Annotated Code of Maryland

.01 Required Benefits Package — In General.

A. — B. (text unchanged)

C. Cost Sharing and Prohibitions.

(1) [An] Except for the following, an MCO may not charge its enrollees any copayments, premiums, or cost sharing [of any kind]:

(a) Up to a \$2 copayment in accordance with COMAR 10.09.03.05C; or

(b) Any other charge up to fee-for-service limits as approved by the Department.

(2) (text unchanged)

D. — E. (text unchanged)

.12 Benefits — Nursing Facility Services.

A. — B. (text unchanged)

C. The MCO shall reserve nursing facility beds for recipients hospitalized for an acute condition within the first 30 days, not to exceed 15 days per single acute visit.

[C.] D. — [E.] F. (text unchanged)

10.09.73 Maryland Medicaid Managed Care Program: Sanctions

Authority: Health-General Article, §15-103(b)(9),
Annotated Code of Maryland

.01 [Sanctions.] Sanction by the Department.

A. (text unchanged)

B. Corrective Action.

(1) Subject to §B(2) and (3) of this regulation, before imposing a sanction pursuant to §A of this regulation, the Department [shall] may permit an MCO an opportunity to take corrective action in accordance with a plan approved by the Department.

(2) (text unchanged)

[(3) The Department is not required to provide an MCO with an opportunity for corrective action before imposing a sanction if the Department determines that there is a likelihood of immediate and substantial harm to the MCO's enrollees if implementation of the sanction is delayed.]

C. (text unchanged)

.01-1 Sanction by Center for Medicare and Medicaid Services (CMS).

The Department shall comply with notification requirements of CMS at 42 CFR §438.730 for sanction determinations as specified in 42 CFR §438.700(b)(1) — (b)(6).

.03 Incentives.

A. — B. (text unchanged)

C. The fund shall be used [exclusively] to provide financial incentive awards to the MCOs that meet or exceed specific performance targets as established by the Department, unless otherwise directed by law.

NELSON J. SABATINI
Secretary of Health and Mental Hygiene

time, the Secretary of Health and Mental Hygiene is withdrawing the amendments to Regulation .01 under COMAR 10.09.03 Pharmacy Services as proposed in 30:15 Md. R. 1000 — 1001 (July 25, 2003).

Effective Date: November 10, 2003.

NELSON J. SABATINI
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS
10.09.03 Pharmacy Services

Authority: Health-General Article, §§2-104(b), 15-103, 15-103.1, 15-105, and 15-118, Annotated Code of Maryland

Notice of Final Action
(03-182-F)

On October 9, 2003, the Secretary of Health and Mental Hygiene adopted amendments to Regulation .12 under COMAR 10.09.03 Pharmacy Services. This action, which was proposed for adoption in 30:15 Md. R. 1001 — 1002 (July 25, 2003), has been adopted as proposed.

Effective Date: November 10, 2003.

NELSON J. SABATINI
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS
10.09.11 Maryland Children's Health Program

Authority: Health-General Article, §§2-104(b), 15-101(f), and 15-103(a)(2), Annotated Code of Maryland

Notice of Final Action
(03-178-F)

On October 20, 2003, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .01 — .03, .06, and .10 under COMAR 10.09.11 Maryland Children's Health Program. This action, which was proposed for adoption in 30:15 Md. R. 1007 — 1009 (July 25, 2003), has been adopted as proposed.

Effective Date: November 10, 2003

NELSON J. SABATINI
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS
10.09.24 Medical Assistance Eligibility

Authority: Health-General Article, §§2-104(b), 15-103, and 15-105, Annotated Code of Maryland

Notice of Final Action
(03-101-F)

On October 20, 2003, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .10 and .10-1 under COMAR 10.09.24 Medical Assistance Eligibility. This action, which was proposed for adoption in 30:10

Md. R. 675 — 676 (May 16, 2003), has been adopted as proposed.

Effective Date: November 10, 2003.

NELSON J. SABATINI
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS
10.09.43 Maryland Children's Health Program (MCHP) Premium

Authority: Health-General Article, §§15-101(f), 15-103(a)(2), and 15-302 — 15-304

Insurance Article, §§15-1206, 15-1213, 15-1406, and 27-220, Annotated Code of Maryland

Notice of Final Action
(03-179-F)

On October 20, 2003, the Secretary of Health and Mental Hygiene adopted amendments to Regulations .02 — .05 and .09 — .15 under COMAR 10.09.43 Maryland Children's Health Program (MCHP) Premium. This action, which was proposed for adoption in 30:15 Md. R. 1009 — 1014 (July 25, 2003), has been adopted as proposed.

Effective Date: November 10, 2003.

NELSON J. SABATINI
Secretary of Health and Mental Hygiene

Subtitle 09 MEDICAL CARE PROGRAMS

Notice of Final Action
(03-184-F)

On October 10, 2003, the Secretary of Health and Mental Hygiene:

- (1) Adopted amendments to Regulations .02, .19, and .20, and repealed Regulation .19-1 under COMAR 10.09.65 Maryland Medicaid Managed Care Program: Managed Care Organizations;
- (2) Adopted amendments to Regulations .01 and .12 under COMAR 10.09.67 Maryland Medicaid Managed Care Program: Benefits; and
- (3) Adopted amendments to Regulations .01 and .03 and new Regulation .01-1 under COMAR 10.09.73 Maryland Medicaid Managed Care Program: Sanctions.

This action, which was proposed for adoption in 30:15 Md. R. 1014 — 1015 (July 25, 2003), has been adopted with the nonsubstantive changes shown below.

Effective Date: November 10, 2003.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

COMAR 10.09.65.19D(5) and .20C: The addition of language makes clear that when the Medicaid Program increases the Medicaid fee-for-service rate, the MCO must pass that rate adjustment through to its providers but, if the MCO was already paying its providers at the rate established by the increase, it need not increase its rates to exceed the Medicaid fee-for-service rate. This is consistent with Medicaid policy.

These changes are not substantive because it reasonably could have been anticipated by MCO providers. The Medicaid Program has never mandated that the MCOs pay providers any particular rate. Payment rates are established by contract between the MCO and the provider. These regulations make clear that the only rate increase the Program could mandate is the rate increase received by the Medicaid fee-for-service providers. These changes establish the rate floor. Establishing a rate floor for the purpose of these regulations does not disadvantage any MCO provider.

.19 MCO Reimbursement.

A. — C. (text unchanged)

D. Interim Rates Adjustments.

(1) — (4) (proposed text unchanged)

(5) Provider rate adjustments as specified in §D(2)(b) of this regulation may not require the MCOs to pay providers more than the Medicaid fee-for-service rate.

.20 MCO Payment for Self-Referred, Emergency and Physician Services.

A. — B. (proposed text unchanged)

C. An MCO shall pass on to providers any MCO rate adjustment that is specified by the Department for a fee increase. The MCO may not be required to pay providers more than the Medicaid fee-for-service rate.

NELSON J. SABATINI
Secretary of Health and Mental Hygiene

Subtitle 14 CANCER CONTROL

10.14.04 Breast Cancer Program

Authority: Health-General Article, §20-116,
Annotated Code of Maryland

Notice of Final Action

[03-232-F]

On October 15, 2003, the Secretary of Health and Mental Hygiene adopted new Regulations .01 .09 under a new chapter, COMAR 10.14.04 Breast Cancer Program. This action, which was proposed for adoption in 30:17 Md. R. 1210 — 1214 (August 22, 2003), has been adopted with the nonsubstantive changes shown below.

Effective Date: November 10, 2003.

Attorney General's Certification

In accordance with State Government Article, §10-113, Annotated Code of Maryland, the Attorney General certifies that the following changes do not differ substantively from the proposed text. The nature of the changes and the basis for this conclusion are as follows:

Regulation .04A(2): Limits eligibility for breast cancer services to applicants who are 40 years old through 49 years old. However, this regulation should have extended eligibility to applicants who are 40 years old or older. This inaccuracy should have been readily apparent by reading the chapter as a whole since in every other provision that addresses at what age individuals qualify for services, it states that these regulations apply to individuals who are 40 years old through 49 years old as well as to those who are 50 years old or older. The regulations then provide for certain breast cancer services to be delivered within a certain time frame, depending upon which of these age brackets the individual falls into.

Specifically, Regulations .01, .02, .03, and .07 refer to various ways in which these regulations carry out the purpose of Health-General Article, §20-116, Annotated Code of Maryland. This enabling statute expressly states that certain breast cancer services should be provided at least once every 2 years to eligible women who are 40 years old through 49 years old and annually to eligible women who are 50 years old or older. In addition, Regulation .06A(2) specifies the breast cancer program covers mammograms that are provided annually to enrollees who are 50 years old or older and on a once every 2 year basis to enrollees 40 years old through 49 years old. It is apparent after reading COMAR 10.14.04 that these regulations were intended to govern breast cancer services for women who are 40 years old or older. Therefore, amending Regulation .04A(2) to provide that to be eligible to receive breast cancer services under this chapter through the Breast and Cervical Cancer Program, an applicant shall be 40 years old or older would be a nonsubstantive change.

Regulations .03B(1), .04A(5), .07A, and .08A The definition of the Breast and Cervical Cancer Program in Regulation .02B(4) expressly provides that the Program may be administered by a local health department or a private entity that contracts with the Department to render services in Baltimore City and Calvert County under the Breast and Cervical Cancer Program. This overarching definition of the Breast and Cervical Cancer Program applies to the entire chapter. There are four places throughout the chapter that address providing breast cancer services under the Breast and Cervical Cancer Program through the local health department but are silent on also providing those services through a private entity that contracts with the Department to render services in Baltimore City and Calvert County. Because the overarching definition allows breast cancer services to be provided by a private entity in Baltimore City and Calvert County, that concept needs to be explicit throughout the regulations. The four places where this obvious omission was made appear in Regulations .03B(1), .04A(5), .07, and .08.

In conclusion, adding the concept about private entities in Baltimore City and Calvert County to Regulations .03B(1), .04A(5), .07, and .08 does not constitute a substantive change since it is apparent from the overarching definition applicable to the entire chapter that private entities in Baltimore City and Calvert County are entitled to contract with the Department to provide breast cancer services through the Breast and Cervical Cancer Program.

.03 Overview of Funding and Delivery of Services.

A. (proposed text unchanged)

B. Services funded under the Breast Cancer Program shall be delivered through two previously existing programs as follows:

(1) Breast cancer screening and diagnostic services shall be provided to an enrollee through local health departments and private entities that contract with the Department to render services in Baltimore City and Calvert County under the Breast and Cervical Cancer Program; and

(2) (proposed text unchanged)

C. (proposed text unchanged)

.04 Eligibility Breast and Cervical Cancer Program.

A. To be eligible to receive breast cancer services under this chapter through the Breast and Cervical Cancer Program, an applicant shall: